

KENT COUNTY WATER AUTHORITY

MINUTES OF THE MEETING OF THE BOARD

October 18, 2012

A regular meeting of the Board of Directors of the Kent County Water Authority was held on the 18th day of October, 2012, at 3:30 p.m. at the offices of the Authority in West Warwick, RI, in the Joseph D. Richard Board Room.

Chairman Boyer opened the meeting at 3:30 p.m. Board Members Mr. Gallucci, Mr. Giorgio, Mr. Inman and Mr. Masterson were present together along with the General Manager Timothy J. Brown, legal counsel Patrick J. Sullivan, Esq. as well as Mr. Duscheneau. Mr. Sullivan led the group in the pledge of allegiance.

APPROVAL OF THE MINUTES

The minutes of the regular board meeting of September 20, 2012 were presented for approval. Mr. Masterson moved passage, seconded by Mr. Giorgio, and the minutes were unanimously approved.

GUESTS

3:30 p.m. High Service Requests:

588 Tillinghast Road, East Greenwich, RI

Mrs. Schock appeared before the Board seeking water service in the high service area. Mr. Masterson reports attending a lengthy meeting with Mrs. Schock. He indicated that the Schock family has resided at this address with her family since the 1960's. He further reports that a family member who resided in the home has an illness that would benefit from a public water connection. After a discussion the board acted.

It was moved by Mr. Masterson, seconded by Mr. Gallucci, to conditionally approve the request for water supply to a single family home with the following conditions in lieu of a moratorium:

1. The Kent County water Authority is not a guarantor of water supply for this or any other approval and KCWA can only supply water reasonably available to it and therefore any applicant/customer of KCWA understands that any third-party commitments made by an applicant/customer are subject to the reasonable availability of water Supply and limits of the existing infrastructure to support service.

2. A deficient condition associated with accelerated commercial and residential development exists in the area serviced by the KCWA, KCWA is in the process of planning for additional water supply and therefore delays or diminution in service may occur if the water supply is unavailable or unable to produce water sufficient to service the customers KCWA.
3. Ventures, commitments or agreements are at the applicant's sole risk if supply for existing infrastructure is found to be insufficient to support service. The applicant may afford the authority with system improvements to facilitate adequate service.
4. The applicant shall file a formal single-family home application. The applicant/customer understands that any undetected error in the application or an increase or change in demand as proposed, which materially affects the ability to supply water to the site, will be the responsibility of the applicant/customer and not the KCWA.
5. Only conservation-wise plumbing fixtures are to be installed including, but not limited to, low flow shower heads, low flow toilets and low flow guarantors on faucets.
6. If irrigation systems are installed, they must be supplied by a private well. Xeriscape landscaping technique and/or proper planting bed (high water holding capacity) slow preparation shall be employed throughout the project.

Upon Motion made, and duly seconded, and unanimously voted,

VOTED: That based upon health and safety concerns to conditionally approve the request for water supply to service a single family home with the following conditions in lieu of a moratorium:

1. The Kent County water Authority is not a guarantor of water supply for this or any other approval and KCWA can only supply water reasonably available to it and therefore any applicant/customer of KCWA understands that any third-party commitments made by an applicant/customer are subject to the reasonable availability of water supply and limits of the existing infrastructure to support service.
2. A deficient condition associated with accelerated commercial and residential development exists in the area serviced by the KCWA, KCWA is in the process of planning for additional water supply and therefore delays or diminution in service may occur if the water supply is unavailable or unable to produce water sufficient to service the customers KCWA.
3. Ventures, commitments or agreements are at the applicant's sole risk if supply for existing infrastructure is found to be insufficient to support service. The applicant may afford the authority with system improvements to facilitate adequate service.

4. The applicant shall file a formal single-family home application. The applicant/customer understands that any undetected error in the application or an increase or change in demand as proposed, which materially affects the ability to supply water to the site, will be the responsibility of the applicant/customer and not the KCWA.
5. Only conservation-wise plumbing fixtures are to be installed including, but not limited to, low flow shower heads, low flow toilets and low flow guarantors on faucets.
6. If irrigation systems are installed, they must be supplied by a private well. Xeriscape landscaping technique and/or proper planting bed (high water holding capacity) slow preparation shall be employed throughout the project.

LEGAL

Legal counsel Patrick J. Sullivan reports that the General Manager had forwarded a notice received from the Bankruptcy Court for a customer who had filed for a chapter 13 bankruptcy. Mr. Sullivan advised the board that in most all instances a claim should be filed, even if the bankruptcy estate was later determined to be insolvent. He advised that he would file a claim in this matter.

In addition, Mr. Sullivan reported receiving correspondence from Mr. Brown, the General Manager, regarding the Central Coventry Fire District and the outstanding bill for hydrant fees and a building service. Mr. Sullivan reports that a temporary receiver was appointed by the Superior Court, a Mr. Richard Land, and that he has taken control over the fire district. Claims will be filed with the receiver.

Braver PC Audit Presentation

A report was presented by Braver PC, who conducted the annual audit for the Authority. He initially reports full cooperation by all employees. He indicated that the financial statements provided fairly and accurately present the position of the KCWA. He reports a \$7.3 million dollar increase in net assets; however he reports revenues were down \$800,000.00 from the prior year. He reports that operating expenses were consistent with expectations. He further reported unrestricted net assets amounted to \$4.6 million dollars at year-end. Pension funding status was reported as healthy, funded to 74.4%. He reported that no material weaknesses or significant deficiencies in internal controls were noted as a result of their auditing procedures. He further reports no compliance problems and that the KCWA was compliant with all bond covenants. Finally, he reported water quality protection engagement disclosed no issues.

Mr. Inman requested the amount owed by the authority of other post employment benefits (OPEB). The auditor reports that only \$5 million is owed on these benefits, which is relatively small compared with other organizations of similar size. He indicates this is because other organizations grant more generous benefits.

The General Manager reports that KCWA funds these OPEB on the pay as you go system. He

reports that this costs the Authority \$107,000.00 annually. These OPEB are not required to be fully funded, according to Mr. Brown, just fully disclosed. The auditor suggests that he does not believe that there will be a change in accounting standards that would require OPEB to be fully funded, like pensions are currently required to be. Mr. Brown also reminds the board that Beacon Mutual Insurance Co., who insures the Authority, may get involved with a trust fund.

The Financial Statements and Supplementary Information for years ended June 30, 2012 and 2011 with Report of Independent Auditors is attached hereto as exhibit "B".

Director of Finance Report:

General Manager Tim Brown rendered the finance report, which dealt with water sales and collections. He presented a chart of KCWA Retail Sales which shows below average sales. He reminds the board that these below average sales will reflect a revenue downturn. He reports this is a trend across the industry.

Mr. Brown also presented a Revenue Account Cash Flow Projection dated October 17, 2012. He reports expenditures of \$944,000.00. He also reports billings of \$3,468,279.00, and aging balances in 0-30 days, 31-60 days, 61-90 days, and 90 days and over. He indicated that the Authority has collected one million of the billing so far, and reports that there is a long way to go.

Mr. Gallucci moved and seconded by Mr. Masterson to accept the reports and attach the same as an exhibit and that the same be incorporated by reference and be made a part of these minutes.

Upon Motion duly made and seconded, it was unanimously,

VOTED: That the Revenue Account Cash Flow Projection and Cash Receipts and Disbursements and KCWA Retail Sales attached as "A", be approved as presented and be incorporated herein and are made a part hereof.

Point of Personal Privilege & Communication

Chairman Boyer expressed his enthusiasm with new legal counsel and rate counsel. Mr. Watson appears and is acknowledged by Chairman Boyer. Mr. Watson reports that he is attending a conference at his expense in Tampa Bay, FL for a weeklong program which deals with rate cases. Mr. Watson advises the board that this seminar will discuss trends in the industry and issues regarding public utilities. Chairman Boyer asks the General Manager if the Authority can subsidize a portion of the cost to Mr. Watson. The General Manager reports that Mr. Watson is a private contractor, and as such, is ineligible for a subsidy.

GENERAL MANAGER/CHIEF ENGINEER'S REPORT

GENERAL:

IFR 2010B – Bid Award

The general manager reported that the last piece of the 2010 Infrastructure has now been bid. He reports three bids, and that all three bids are approximate one million dollars apart from the other. He reports that Boyle and Fogarty was the lowest responsible bidder at \$7,378,786.55. He reports that this bid is below the engineer's estimate, and expresses confidence in the bidder. Mr. Brown reports that this project is to be done over two years and that sufficient funds from the infrastructure program will be available at the completion of this for full payment. Mr. Brown recommends the board award this bid to Boyle & Fogarty Construction Company in the bid amount.

Mr. Masterson moved and seconded by Mr. Giorgio to award the IFR 2010B bid to Boyle & Fogarty Construction Company in the amount of \$7,378,786.55.

Upon Motion duly made and seconded, it was unanimously,

VOTED: That the IFR 2010B bid is awarded to Boyle & Fogarty Construction Company in the amount of \$7,378,786.55.

Restricted Operating Request for Use

The general manager again reports that under our annual report required to be filed each year to the Public Utilities Commission, the Authority has indicated that it has not achieved the revenue expected under the cost of service provided by them in our latest rate case, Docket No. 4142. The difference for FY 2012 is \$607,077.00. The balance in the restricted account exceeds that amount and the manager reports that he will be working with legal counsel to prepare a limited filing to utilize \$607,000.00 from the restricted operating account to balance the budget. The manager informed the board that he has contacted both the Division and the Commission and advised of the Authority's intention to seek those funds.

The General Manager expressed his confidence in the Authority's ability to access these funds. He cites loss of revenues, such as through Central Coventry Fire District's failure to pay, as well as his ability to show shrinking revenues. He said he is holding this petition until all the billing gets straightened out sometime in November. He stressed that this is not a rate filing.

Central Coventry Fire District

The General Manager reports on the receivership resulting from the petition filed by the Central Coventry Fire District (CCFD). He advised the board that Mr. Richard Land was appointed as a temporary receiver and that he has asked the attorneys to file claims as a priority claim. He advised the board that CCFD owes wages to its employees as well as payments to Blue Cross/Blue Shield for insurance on its employees. CCFD is in arrears on both. Mr. Inman discusses the tax authorized by the special master. The General Manager advises the board that as the balance keeps building, it reverberates.

A discussion ensues on shutting the service off for the delinquent taxpayer. Mr. Inman reports that KCWA cannot shut off the hydrants. Mr. Sullivan reports that any action pondered to be

taken while any company is in receivership, should get prior approval from the special master, or from the Judge. Mr. Brown said the district will get their funds, as they are a taxing authority, and it is just a matter of time.

Center of New England Billing/Payments

This matter was skipped until later in the meeting, as Mr. Scott Nelson, had not yet arrived at the meeting.

Division Hearing Service Availability

The General Manager discussed the continued division hearing on service availability. He reminds the board it involves a service request on Deer Run, which doesn't meet pressure requirements, nor the regulations of the Department of Health, nor does it meet the Plumbing Code. He indicates the hearing has concluded as of October 10, 2012, with briefs and reply briefs due over the next month and a half. He reports that a rule may ultimately come out of this order, which could have a major impact upon Kent County Water Authority and its ability to supply and/or be licensed to operate. He cites a conflict between the Division, Department of Health, the Environmental Protection Agency, and the Plumbing Code Regulations. All have been presented at the meetings. Mr. Brown suggests an appeal in the event of an adverse ruling, as this is an extremely important issue for the operation of the Authority.

Selection Engineer/Treatment Manager

CAPITAL PROJECTS:

CIP 1C Mishnock Well Treatment Plant and CIP 1B Mishnock Transmission

The General Manager reports that this is moving along fairly well, notwithstanding the fact that it is behind schedule. Completion is expected in April 2013. At this time, Mr. Brown reports that he would not consider liquidated damages and will await the finalization of the project to determine whether the Authority has been truly damaged by the extension of the schedule. Mr. Brown reports he is pleased by the contractor and his work, and hope it will result in a high quality treatment facility for the Authority. He further reports that two employees will be trained initially early next year, along with the new engineer operator. He advises that the transmission main is now being tested and chlorinated and expects it to be completed this month and dewatered awaiting future funding to complete the remaining 2/3 on Mishnock Road.

INFRASTRUCTURE PROJECTS

IFR 2009B

The General Manager reports that construction is virtually complete, except for paving, for this project. Paving will be conducted in the spring after the winter settling.

IFR 2010A

The General Manager reports that construction is moving along well on this project, and

the main installation on J.P. Murphy Highway is complete. The O'Donnell Hill area in Warwick is under construction with completion expected this winter. Paving will be in the spring as well. He reports that ratification of Change Order No. 1 is required, which included the replacement of Meadow Road, Garden Lane and County lane in the amount of \$258,850.00.

Mr. Masterson moved and seconded by Mr. Gallucci to ratify Change Order No. 1, which included the replacement of Meadow Road, Garden Lane and County lane in the amount of \$258,850.00.

Upon Motion duly made and seconded, it was unanimously,

VOTED: That the board ratifies Change Order No. 1, which included the replacement of Meadow Road, Garden Lane and County lane in the amount of \$258,850.00.

Quaker Lane Pumpstation Upgrade

The General Manager reports that construction of the wall has been completed, and a revised schedule is still being reviewed. With a delay of 26 weeks on the pump delivery, the timetable hasn't changed, and this project still isn't expected to be completed until spring or summer 2013.

Water Street Replacement

Construction in East Greenwich has begun on the sewer line. The General Manager reports that the water line will be replaced as well. It is a joint project by the Authority and the Town of East Greenwich. The General Manager advises Mr. Masterson that Geremia and Associates is the design engineer.

Re Visit Center of New England Billing/Payments

Chairman Boyer acknowledges Mr. Scott Nelson to the meeting. A discussion ensues regarding Centre of New England (CONE) water use and payments. The General Manager reports to the board that CONE is currently in arrears of \$48,000.00 and is in shutoff, which is greater than 70 days late. Chairman Boyer questions Mr. Nelson regarding the previous agreement the board had with CONE to pay on their back billings but also to remain current with ongoing usage charges.

Mr. Nelson reports that he brought in a check for \$4,000.00 to the meeting and tendered it for payment. The Chairman asks if there were any written agreements entered into between the authority and CONE. Mr. Brown reminds the board that there are no payment plans offered for commercial accounts. Mr. Nelson requests payment of \$5,000.00 every two weeks as a compromise. Mr. Masterson suggests that there are two master meters, and that the owner is billing tenants and owners within the development.

Chairman Boyer suggests that the Authority notify individual tenants of a shutoff. Mr. Brown suggests we cannot do it. Mr. Brown reminds that the Authority had been served with a letter prohibiting any KCWA employees from coming onto the property, and that letter had

never been rescinded. Chairman Boyer reminds Mr. Nelson that the bill will balloon to \$90,000.00 with the next bill. Mr. Inman reminds the board that the owner has been paid for the water by the tenants, and is potentially earning interest on the funds collected.

Mr. Gallucci reports similarities between CCFD and CONE involving shutoffs. If KCWA goes ahead with shutoffs at CONE, there may be legal liability in the event of a fire. Mr. Brown reminds the board that the Division requires the Authority to treat residential and commercial the same, and that we shut off customers regularly. Mr. Brown also reminds the board that in the event an occupied building lacks water, it's certificate of occupancy is revoked, rendering it uninhabitable.

Mr. Nelson said that last time there was an agreement, to which Mr. Brown responded that the agreement hadn't been adhered to.

Chairman Boyer suggests to legal counsel that he look into creating a written agreement, to which Mr. Sullivan suggests a consent judgment enforceable by a court of law. Additional discussion ensues.

Mr. Giorgio suggests a 120 day notice to all tenants of a shutoff, and perhaps that would force the owner to pay what is owed. Mr. Masterson suggests that the majority of all tenants are probably up to date.

Mr. Brown reminds the board that the Authority is not a bank, and that the PUC reacts harshly when there are funds outstanding.

Mr. Inman suggests a time frame to resolve the issue as we lose leverage otherwise. Mr. Nelson suggests fifteen days to resolve the issue.

Chairman Boyer moved and seconded by Mr. Masterson to have legal counsel draft a letter of agreement/consent judgment and any other necessary pleadings between CONE and KCWA to resolve the issues of payment of arrears and payment of ongoing usage within fifteen days.

Upon Motion duly made and seconded, it was unanimously,

VOTED: That legal counsel draft a letter of agreement/consent judgment and any other necessary pleadings between CONE and KCWA to resolve the issues of payment of arrears and payment of ongoing usage within fifteen days.

Executive Session in Accordance with RIGL 42-46-5(a)(1) - Employee Performance Review, Employment Status

Chairman Boyer addresses Mr. Stephen Correia as follows:

Mr. Stephen Correia, you were notified in writing on September 2, 2012 that a discussions concerning your job performance was to be held in executive closed session at 4:30 p.m. by the Board of Kent County Water Authority unless you require the proceeding to be held

in open session. Do you wish these proceedings to be held in open session?” to which Mr. Correia requested the proceedings be held in closed session.

Mr. Masterson moved and seconded by Mr. Giorgio that the board move into executive session for discussion of job performance, character, physical or mental health pursuant to RIGL 42-46-4 and 42-46-5(a)(1)

Upon Motion duly made and seconded, it was unanimously,

VOTED: That the board move into executive session for discussion of job performance, character, physical or mental health pursuant to RIGL 42-46-4 and 42-46-5(a)(1).

The board goes into executive session at 4:43 p.m.

At 4:55 p.m. the board emerges from executive session.

Mr. Gallucci moved and seconded by Mr. Masterson that the board exit from executive session and that the minutes of the meeting shall remain under seal pursuant to RIGL 42-46-4 and 42-46-5

Upon Motion duly made and seconded, it was unanimously,

VOTED: That the board exit from executive session and that the minutes of the meeting shall remain under seal pursuant to RIGL 42-46-4 and 42-46-5.

There being no further business before this meeting, on motion duly made, seconded and carried, the meeting was adjourned at 5:00 p.m.

Dated: October 25, 2012

Legal Counsel